BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: RAUL Z., Claimant, and EASTERN LOS ANGELES REGIONAL CENTER, Service Agency.	OAH No. 2011010471

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 9, 2011 in Alhambra, California.

Griselda J., claimant Raul Z.'s mother, represented claimant. Claimant's grandfather, Victor J., provided assistance.[1]

Arturo De La Tore, represented Eastern Los Angeles Regional Center (service agency or ELARC).

Testimonial and documentary evidence was received, the case argued and the matter submitted for decision on May 9, 2011. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

Should the service agency continue to fund 22 hours per week of family member-vendored day care services for claimant.

[1] Initials are used to preserve confidentiality.

FACTUAL FINDINGS

1. Claimant is a seven-year-old consumer of ELARC based on his qualifying diagnosis of Autistic Disorder. He also has diagnoses of expressive language disorder and feeding disorder of early childhood. Claimant has a history of reflux, atrial septal defect, ventricular septal defect, and meningitis. He resides with his mother, father and sibling. He is enrolled in the Los Angeles Unified School District where he receives specialized academic instruction (1450 minutes weekly), speech therapy (60 minutes weekly), and occupational therapy (40 minutes weekly).

2. Claimant's Individual Program Plan (IPP), Medical Waiver Service Plan and Consumer Profile, all dated August 17, 2010, indicate that he "experiences behavioral challenges in the form of temper tantrums." He "has difficulty with interacting appropriately with his siblings, peers, and others."

3. Claimant's mother's testimony credibly established that commencing September 2008, the service agency funded after school[2] day care services for claimant through Peace Christian Lutheran Church where there was a "very big" 30:1 adult-child ratio. Claimant's mother testified that "as time went on . . . [claimant] became more aggressive." In June 2007, claimant was moved to St Andrews Preschool, which had a similar large adult-child ratio. "It did not go so well because of . . . [claimant's] behaviors." Claimant's service coordinator suggested a smaller setting, and in June 2008, claimant was placed with a provider caring for 10 children. But, "because of his aggressive behaviors, [the provider] decided that it was not okay for him." In September 2008, claimant's service coordinator recommended "family day care for kids with behavioral issues." On October 22, 2008, the service agency retained claimant's grandmother, who "has specialized training to care for special needs children," to provide 22 hours of day care services each week to claimant at a cost of $290 per week.[3]

4. On August 17, 2010, the service agency notified claimant's mother of its proposed action "denying[4] your request for 22 hours a week of Family member vendored day care services." The service agency articulated reasons for its action are as follows:

> Day care services are not specialized services that are directed toward the alleviation of developmental disability. Any child under the age of 13 would require day care services. Additionally, we have requested that you research

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[2] A neighbor provides before school care to claimant, for which is his parents pay.

[3] Claimant's grandmother also cares for his two cousins.

[4] Although the Notice of Proposed Action states that the service agency was denying claimant's request for family member vendored day care services, the testimony and documents introduced at hearing clearly established that claimant was already receiving services, which were then disrupted in August 2010.

and utilize generic resources (i.e. relative, reliable and trustworthy friend, etc) and or services that serve the general public by providing day care services at no costs or low cost to you."

In support of its proposed action, the service agency relied on Welfare and Institutions Code sections 4512, subdivision (b), 4685, subdivision (c)(6), 4646, subdivision (a), 4646.4, subdivision (a), 4648, subdivision (a)(8), and 4659, subdivision (a)(1), and California Code of Regulations, title 17, section 54326, subdivision (d)(1).

5. Claimant's mother filed an October 1, 2010 Fair Hearing Request[5] to "reinstate previous day care services . . . as agreed on IPP from June 2009."[6] Claimant has not been receiving aid paid pending administrative resolution of the matter.

6. Since August 2010, claimant's father has adjusted his work schedule to care of claimant after school. It has taken a financial toll on the family. Claimant's mother has explored several after school day care alternatives, but none has proven satisfactory. She testified that claimant's sibling attends The Recreation and Education Accelerating Children's Hopes (REACH)[7] program, but that this program is "not appropriate" for claimant because he "will break every rule." She objects to Walking Crew After School Child Supervision program because there is "no one-to-one care" and the children have to walk in the streets, which is unsafe for claimant. Whittier YMCA's costs of $864 per month for fees, plus an additional $800 for one-to-one care, are prohibitive.

7. Claimant's mother testified that since claimant's grandmother has been providing him with after school day care, claimant is "easy to control." When claimant is with other children he is "very aggressive." He hits, uses bad language, throws objects and has tantrums. More than one year ago, claimant received behavior modification services, but his services ended because "no therapist was available." Claimant's mother testified that "he was changing services a lot; he was hitting the behavior modification people." Claimant's mother does not want him "to feel he is not successful when his program is being changed frequently. In a family setting he can feel successful. He is progressing."

8. The service agency contends that "an inclusive setting is best" for claimant, and that he should "not be at home with grandma where it is not a natural environment." The service agency expressed a willingness to fund after school day care services for claimant in a setting other than his grandmother's home.

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[5] The service agency made no objections to the un-timeliness of the Fair Hearing Request.

[6] Neither party offered a June 2009 IPP at hearing.

[7] REACH is collaboration between the City of Pico Rivera and the El Rancho Unified School District fund through a grant from the California Department of Education.

9. The service agency offered no evidence in support of its contention that "an inclusive setting is best" for claimant.

10. The service agency offered no evidence of its anticipated cost of funding after school day care services for claimant in a setting other than his grandmother's home.

11. The service agency produced no evidence of its purchase of service policy.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500, et seq.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community." (Welf. & Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620, et seq.) Regional centers are responsible for developing and implementing individual program plans for consumers, for taking into account individual consumer needs and preferences, and for ensuring that services and supports effectively meet the consumer's goals in a cost effective manner. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. Services and supports for persons with developmental disabilities are defined as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).) Services and supports include day care. (*Id.*)

3. The services and supports to be funded for a consumer is determined through the individual program plan process, which involves collaboration with the consumer and service agency representatives. (Welf. & Inst. Code, § 4512, subd. (b).) "The determination of which services and supports are necessary shall be made on be basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan and the cost-effectiveness of each option." (*Id.*)

4. Generally, when purchasing services and supports, regional centers are required to ensure all the following:

> (1) Conformance with the regional center's purchase of service policies . . . .
>
> (2) Utilization of generic services and supports when appropriate.
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> (3) Utilization of other services and sources of funding as contained in Section 4659.
>
> (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision and the need for timely access to this care.

(Welf. & Inst. Code, § 4646.4, subd. (a)).

5. Specifically, "when purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the costs of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home." (Welf. & Inst. Code, § 4645, subd. (c)(6)).

6. The selection of a service provider requires consideration of several factors: (1) a provider's ability to deliver quality services and supports which can accomplish all or part of the consumer's individual program plan; (2) a provider's success in achieving the objectives set forth in the individual program plan; (3) a provider's licenses, accreditation and professional certifications; (4) whether services and supports of comparable quality can be obtained at less cost from another available provider; and (5) the consumer's choice of providers. (Welf. & Inst. Code, § 4648 (a)(6).)

7. "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (Welf. & Inst. Code, § 4648, subd. (a)(8)). Regional centers are required to "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a)).

8. Regional centers are prohibited from "us[ing] purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's responsibility for providing similar services to a minor child without disabilities. In such instances, the regional center must provide for exceptions, based on family need or hardship." (California Code of Regulations, title 17, section 54326, subdivision (d)(1)).

9. As the party seeking a modification of an existing service or support, ELARC bears the burden of proving by a preponderance of evidence that a change is warranted. (Evid. Code, § 500.)[8] ELARC has not met its burden.

10. Claimant's aggression and difficulty interacting appropriately with peers caused his expulsion from several large after school day care programs. After investigation, other alternate programs were proven inappropriate for claimant. Claimant nonetheless has extraordinary needs for 22 hours per week of after school day care services where his aggression will be effectively managed. His grandmother has been providing such services at a rate of $290 per week. The service agency offered no evidence establishing that comparable after school day care services are obtainable from another provider for less cost. The service agency offered no evidence establishing such family-vendored service as contrary to its purchase of service policies. The service agency additionally offered no evidence establishing such family member-vendored service as cost ineffective.

11. Cause exist pursuant to Factual Findings 2, 3, 6, 7, 8, 9, 10 and 11 and Legal Conclusions 1 through 10, inclusive, for ELARC to continue to fund 22 hours per week of family member-vendored day care services for claimant.

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[8] Evidence Code section 500 provides that "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

ORDER

1. Claimant Raul Z.'s appeal is granted.

2. East Los Angeles Regional Center shall continue funding claimant Raul Z.'s 22 hours per week of family member-vendored day care services.

Dated: May 24, 2011

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JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE:
THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.